

COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS

Minutes of Meeting – Monday, August 19, 2024

This Zoom-enabled meeting began at 7:30 PM. The meeting was chaired by CGCA Chair Madelon O'Shea (Old Edgemont). In attendance were: Mike Burdi (Suburban Manor), Paul Colten (Hilltop Farms), Alan Fishman (Northern Greenville), Ellen Foley (East Irvington), Alicia Ford (Parkway Homes), Maria Gomez (Fulton Park), Richard Grant (Hartsdale Park), Maria Pecora & Bill Sullivan (Sprain Brook Parkway), Ella Preiser (Beaver Hill), Dylan Pyne (Edgemont Community Council President), and Carol Sarcinella (Hartsdale Park). Also attending was Greenburgh Town Councilman Francis Sheehan.

DYLAN PYNE APPOINTED TO PLANNING BOARD

At last week's Town Board meeting (8/14/24), Dylan Pyne was officially appointed as a new Planning Board member with a term to expire 12/31/2030. The agenda stated that the appointment was to fill a position with a term that had expired on 12/31/23. Ella Preiser said that position was formerly held by Planning Board Chairman Hugh Schwartz. She said during the Public Comments session at the meeting, Planning Board member Walter Simon stated that he would immediately resign if Mr. Schwartz was not re-appointed. Planning Board member Johan Snaggs said he would not attend the next Planning Board meeting if Mr. Schwartz was not re-appointed. Councilman Francis Sheehan noted that written correspondence has been forwarded to the Town Clerk that make the resignations of Mr. Schwartz and Mr. Simon official. No mention was made of who will chair the Planning Board. Mr. Sheehan said that the appointments approved last week had nothing to do with Town Board resolution TB-1 that was adopted on July 10, 2024.

Madelon O'Shea said she heard, but has no validation, that former Planning Board Chairman Hugh Schwartz and his wife are suing four members of the Town Board. Mr. Sheehan responded he didn't know if it was a fact, but some emails mentioned there could be litigation. He said that Ethics complaints have been filed against the four Town Council members and Town Attorney Joe Danko. The Board of Ethics usually holds one meeting to decide if a complaint has merit. If the Board decides the complaint has merit, another meeting is scheduled to hear the case. The next Board of Ethics meeting is scheduled for September 19, 2024.

Ellen Foley mentioned she had been unable to find some correspondence regarding the Board of Ethics opinion regarding resolution TB-1. Mrs. Preiser said she would send her the link.

POTENTIAL "CONFLICT OF INTEREST"?

Madelon O'Shea noted at last week's Town Board meeting (8/14/24), a resolution was adopted allocating another \$50,000 to the law firm of Whiteman, Osterman & Hanna, LLP to deal with tax certiorari matters. She inquired whether there was a possible "conflict of interest" since this law firm is also representing the application of Chick-fil-A before the Planning Board and ZBA. Ella Preiser said that previous Town Board resolutions indicate when Tim Lewis resigned as Town Attorney and Joseph Danko, who had been handling tax cert cases was promoted as interim Town Attorney, the Town hired (8/2/22) the law firm of Lewis & Greer, P.C. for \$25,000 to handle tax cert cases. Every couple of months the Town adopted another resolution allocating more money to this firm. When the lawyer at Lewis & Greer who had been handling the Town's cases, Dylan Harris, moved to the law firm of Whiteman, Osterman & Hanna, the Town decided to continue using Mr. Harris and on 12/13/23 adopted a resolution hiring Whiteman, Osterman & Hanna. Since then, on June 26 and August 14, 2024, resolutions for \$50,000 each were adopted bringing the total to \$275,000 for outside counsel for tax certiorari matters. Mrs. Preiser noted Mr. Harris is not the attorney that is representing Chick-fil-A before the Town's boards.

Councilman Francis Sheehan said he would look into the issue of whether there was any conflict. He noted it has not been easy to hire new employees to fill vacancies. He said Mr. Danko, who had been handling the tax cert cases could not continue doing that as well as tending to other necessary issues as Town Attorney. Hiring an outside law firm was a necessary stop gap measure to address the tax certiorari issues

CFA APPLICATION REQUIRES MORE MEETINGS IN WHITE PLAINS & GREENBURGH

As previously reported, at the June 20th ZBA meeting, the ZBA appeared ready to grant the Chick-fil-A (CFA) request for 14 variances for the irregularly shaped lot at the intersection of Old Kensico Road and Route 119. The case was closed and adjourned “for decision only” to the July 18 meeting. At the July meeting the applicant asked that the case be re-opened and adjourned because it was necessary to submit additional information. The reason was because the City of White Plains Planning Board Secretary sent a letter to the Town on July 18th stating that the 30-space Commercial Parking Lot on the White Plains property could only be used for employee parking because fast food was not a permitted use on the site. The letter also noted that the Commercial Parking Lot should not be included in meeting the Town’s parking requirement. The CFA application had included the White Plains parcel in the parking variance request. The ZBA adjourned the case to its August 15th meeting.

Ella Preiser noted that she has been chastised by the ZBA’s attorney for not following rules to submit information ten days in advance of a ZBA Public Hearing. But different rules appear to apply to applicants. The promised new information regarding the CFA application was not submitted by August 5. The new information, responding to the White Plains July 18th letter, was received by the Town in a 21-page document at 2:57:49 PM on August 14, the day before the ZBA meeting. The CGCA learned about this submission only hours before the ZBA meeting and scrambled to prepare a response to the CFA document that was filled with typos and misinformation.

At the opening of the August 15th meeting, the ZBA Vice Chair stated because of the lengthy agenda, each case would be limited to 20 minutes. She noted since CFA had presented new information, it was likely the case would be adjourned. What happened? Representatives from CFA spent more than 40 minutes at the microphone, most of the time devoted to responding to two ZBA members’ comments about the chaotic situation that occurred with the opening of a new CFA in the City of Yonkers. Even though a three-lane drive-thru was created on that site, more than 30 cars were seen in a queue on Central Avenue waiting to enter, with Yonkers Police busy directing traffic. And apparently this chaos was observed, not just during the peak lunch and dinner hours, but at 9 PM by one ZBA member.

When it was time to hear from the public at the August 15th ZBA **Public** Hearing on the CFA case, several people raised their hands and were told their time to speak would be limited to three minutes. Tom Bock and Dorrine Livson, who raised their hands, were told they wouldn’t be allowed to speak since they had spoken at previous meetings so the ZBA probably knew what they would have to say. Mrs. Livson called out from the audience that she had spoken previously on a different issue. Three Fulton Park neighbors were invited to speak and made very brief comments. For some unexplained reason, the ZBA Vice Chair changed her mind. Mrs. Livson was invited to speak and made a very brief statement on behalf of the CGCA, thanking the ZBA for holding this application over to next month. Mr. Bock was then invited to speak. The timer went off at three minutes but he was allowed to continue with his comments for another minute. Then, Maria Gomez, who was on Zoom, was invited to speak. When the timer went off at three minutes, she was interrupted and told she could submit her comments in writing. Madelon O’Shea was also on Zoom and was prepared to make a lengthy statement that CGCA members had spent hours writing that day, but decided not to speak at all.

Maria Gomez told those present at the CGCA meeting that she has been speaking with the Secretary of the Planning Board in White Plains about the use of the White Plains parcels as a Commercial Parking Lot. Mrs. Gomez informed White Plains that during peak times, CFA plans to direct overflow vehicles to queue in the White Plains “employees only” parking lot. Mrs. Gomez expressed concerns that CFA employees might start taking orders for customers that were lined up in a queue on this lot.

Questions were raised about why Greenburgh’s Building Department is not honoring requirements of the White Plains Zoning Ordinance. Mrs. Preiser said it appears that the Building Department has been misled and was not aware that fast food facilities were not permitted on the White Plains property, probably because on May 18, 2022, a representative for CFA submitted a document to the Greenburgh Planning Board that stated “a quick

serve restaurant use is allowed” on the site. Three months later (August (8/17/22), interim Building Inspector Robert Dam received a letter from the property owner’s attorney inquiring about a provision of Greenburgh’s Zoning Ordinance that permits use of a parcel containing at least 50% of the required lot size and lot width. It is likely that Mr. Dam was not aware of the White Plains Zoning Ordinance prohibiting fast food because he responded that use of that particular provision of the Greenburgh Zoning Ordinance, along with the lot area in White Plains, would mean an area variance for lot size would not be necessary. Mr. Dam is deceased so cannot explain his answer. Mrs. Preiser noted the CFA representatives do not want to mention this provision in Greenburgh’s Zoning Ordinance because it would mean they could not have any accessory structures, such as the shed/garbage dumpsters and a detached canopy.

The unfairness of the ZBA process was questioned. The applicant’s representative was permitted to submit a written document less than 30 hours before the meeting and then was given an endless amount of time to discuss what was submitted, but the public was limited to three minutes speaking time. And how do ZBA members know what someone is going to say if a person has spoken before? Madelon O’Shea said that ZBA members appear to have short attention spans and get tired of hearing a case that has been on their agenda for more than a few months. It was agreed that the CGCA and members of the public should not submit anything in writing in advance to the ZBA since it is questionable if they even bother to read the submissions. CGCA comments will continue to be presented orally at the Public Hearings.

It was agreed that the CGCA should write to the White Plains Planning Board before its August 27 meeting and inform the Board of how the CFA representatives are playing the two municipalities against each other. Provisions in the White Plains Zoning Ordinance indicate that Greenburgh cannot use the portion of the property located in White Plains [where fast food is not permitted] to comply with Greenburgh’s requirements for “uses” or “dimensions.” However, the CFA representatives have stated both verbally and in writing that it doesn’t matter what the White Plains Zoning Ordinance states because Greenburgh’s Building Department has stated that the White Plains property can be used for zoning compliance. CFA representatives also remind everyone that the Greenburgh Planning Board, as Lead Agency under SEQRA adopted a Negative Declaration that is binding on all other agencies. CFA representatives claim since the “Neg Dec” states that customers waiting in a queue can enter the “employee only” parking lot, White Plains has no option but to accept this fact.

It was also agreed to write to the Westchester County Planning Board and thank the Board for its concerns expressed in a five-page letter, dated October 30, 2023. The letter stated that the proposed CFA development should not be approved because it was inconsistent with *Westchester 2025* and *Patterns for Westchester*, as well as the *Greenburgh Comprehensive Plan*. Mrs. Preiser noted there is nothing the County can do about the fact that its concerns are being ignored. Under SEQRA, the Westchester County Planning Board is merely an “Interested Agency” which means it has no approval authority.

Mike Burdi noted the new Chick-fil-A in the Midway Shopping Center is a sit down restaurant that accepts orders and allows food to be picked up, but doesn’t have a drive-thru. He questioned whether that could be considered for the Old Kensico Road site. Mrs. Gomez responded that the current plans for the Old Kensico Road site call for indoor seating for 74 patrons and another 20 outdoor seats, but the plans also state the two drive-thru lanes will account for 60% of the proposed business. Mrs. O’Shea said she is familiar with the heavy traffic at Chick-fil-A establishments with drive-thru lanes at various Florida locations and questioned how the Fulton Park neighborhood is going to survive, especially on holidays and with major events at the County Center. A helicopter was suggested to manage getting in and out of the neighborhood.

HOUSE DEMOLITION DELAYED DONATION FOR AFFORDABLE HOUSING OFFERED

Alicia Ford again inquired when demolition will take place on the structures at 55 Cummings Avenue that the Town approved November 2023. Councilman Francis Sheehan responded that he understands the owner of the

property now wants to donate it to the Town for affordable housing. He said on August 14, Supervisor Paul Feiner sent a message telling the owners that they should email the Town Board that they are interested in donating the house to the town for affordable housing with the Fuller Center converting the house to an affordable house. Mr. Feiner stated the Town Board would have to review the issue and would have to approve it. Mr. Sheehan said the fact the Fuller Center is mentioned means Mr. Feiner obviously has had other conversations with the owner. Mr. Sheehan mentioned another message to Mr. Feiner from Annie Lasalla that said: "Jim and I met on Wednesday at the property. When will you be available to discuss potential next steps?" Mr. Sheehan referred to another correspondence from QBR Ventures LLC to Mr. Feiner: "Donation of property to Town of Greenburgh." It was suggested that Ms. Ford should FOIL all this correspondence.

Ms. Ford asked if this was the same owner who wanted the back taxes - \$200,000-\$300,000 in arrears erased. She said there was word that the owner bought the house for her sister but the sister bought a house from someone else. Ms. Ford noted that two residents who recently bought homes in the area have young children and keep inquiring when this eyesore will come down. Mr. Sheehan said the Building Department is ready to demolish the structures but can't do so until it receives a statement regarding any asbestos. He noted it was only last week that the Engineering Department became fully staffed. Because of Ms. Ford's inquiry again tonight, he will follow up on the issue with the Engineering Department tomorrow. He said the Town is eager to demolish, because the house is not only an eyesore, but is also a safety hazard.

DYLAN PYNE CONGRATULATED ON APPOINTMENT TO PLANNING BOARD

Madelon O'Shea polled those present regarding issues in their areas. The response from everyone was "it has been a quiet summer so far." Dylan Pyne agreed it has been a fairly quiet summer, and noted the Edgemont Community Council is gearing up for its September meeting. He said there is a full calendar of community programs and some advocacy items the ECC is working on and public safety will continue to be a focus going into next year. Ella Preiser mentioned Mr. Pyne's hard work and said she was happy that he has agreed to be appointed to the Planning Board. She noted the Town needs to begin turning things over to the younger generation. Mr. Pyne appreciated the comments and said he appreciated the opportunity to serve. Alan Fishman said there are indeed safety issues that need addressing. He commented that Mr. Pyne had done so much work for Edgemont and has been willing to step up where ever and whenever someone needed something.

ESCO STILL COSTLY - TOWN AGREES TO NEW ESCO CONTRACT

Madelon O'Shea said she just received her Con Edison bill and it was a whopper! Most of those present had a similar experience, likely because of the extra kilowatt hours needed to run air conditioners during the extremely hot month of July. Ella Preiser reported that once again, for the 21st month in a row, the price Con Edison charged per kWh for electricity was considerably cheaper than the price charged by the ESCO in which the Town enrolled thousands of residents and small business owners. The average Con Edison default price for the month of July was 11.50¢ per kWh. Mrs. Preiser said her price (mainly for the month of July) and that of the Livson's was 11.69¢ per kWh, and Ken Stahn's price was 11.66¢ per kWh. While these Con Edison costs for July were fairly high, they were still at least 3.76¢ to 3.94¢ per kWh less (depending on your meter read date) than the 15.449¢ per kWh charged by the ESCO. There are three months remaining on the current ESCO contract.

The Town Board has agreed again to participate in a Sustainable Westchester contract with the same ESCO (Constellation New Energy) for electricity supply. The contract will begin on one's meter read date in November 2024 and continue until December 2025. The cost will be a bit less expensive - 12.178¢ per kWh, mainly because the Town Board agreed to an option which provides only 50% of the power from renewable "clean" power sources, such as hydropower, wind or solar. The price will be 13.298¢ per kWh for anyone wishing to purchase the 100% renewable option. Those enrolled in another ESCO or who have "opted out" of the current contract will not receive any notice of the new contract.

Alicia Ford said her whole house is electric and she just received another bill with a cost of 18.989¢ per kWh for electricity supply. She noted she has been part of this ESCO contract with Direct Energy for about eight or nine years. She was urged to call the number listed on her bill. If there is no penalty, she should consider opting out of the contract and going with the default Con Edison supply for the time being. She can then consider whether to choose the Sustainable Westchester ESCO or join another ESCO.

Mrs. Preiser noted there are only a few ESCOs, such as CleanChoice Energy, that obtain their electricity supply from 100% renewable sources such as wind, solar, or hydroelectric. Most ESCOs use natural gas and nuclear as the main sources of supply. And even though one may be paying for the supposed 100% “clean” electricity supply in which the Town enrolled you, it is a fact that the power coming to your home is the same as the power coming to the next door neighbor’s home, who opted out of this ESCO. There is no separate grid delivering “clean” or “renewable” energy.

VACANCIES CONTINUE IN TOWN DEPARTMENTS

Ella Preiser asked Councilman Francis Sheehan how the Town was doing regarding filling employee vacancies. Mr. Sheehan responded that there had been a critical situation in the Engineering department, but fortunately the department now is fully staffed. He noted that the Town is still short of staff in the Legal and Building departments, but not for lack of trying. He said at least the Town has the option to hire outside counsel to fill the vacancies in the Legal department, but the Building department doesn’t have that option. He noted that Frank Morabito and Liz Gerrity have been doing an unbelievable job of keeping things going in the Town.

Mr. Sheehan said it is not as easy as it used to be to hire people who want to work and have expertise in a particular area. He said Westchester County rules make it very difficult to fill vacancies. He noted the Town had been working with the County on a proposal to see whether there could be an exemption from some civil service testing requirements. “Lateral” moves used to be permitted - allowing an employee to transfer from one municipality to another, but that is no longer allowed. He noted people are unwilling to accept a “provisional” position, knowing that in order to keep the position, one must take a test and score well on it. He said some areas have gone to the state to get an exemption. Greenburgh thought they could, but at the last moment the County said “no.” The Town is now exploring why that is and how to address this really big vacancy problem.

MISCELLANEOUS

Vacancies Remain on Volunteer Boards. Madelon O’Shea mentioned that last month the CGCA brought up the fact that there are a number of vacancies on various volunteer Town boards and committees. She reminded all those present to look within their civic groups for possible residents to fill these vacancies.

Lawsuit Filed. Madelon O’Shea reported that the Estate of Stephanie Kavourias has filed a lawsuit against the Town of Greenburgh, the Village of Scarsdale, the Scarsdale Police Department, the Scarsdale Police Officer, the owner of the car and the driver of the car involved in the death of Stephanie. Mrs. O’Shea said Stephanie was a lovely person and is deeply missed. Those present agreed.

“Thank You” Councilman Sheehan. The CGCA expressed appreciation to Francis for attending tonight’s meeting and providing information on a number of issues.

“Thank You” Carmela and Dora. The CGCA expressed appreciation to Carmela Gregco-Acevedo for arranging this Zoom meeting and to Dora Ashley who maintains the CGCA website (cgca.info).